

THE POLITICAL ECONOMY OF INSTITUTIONAL REFORM IN THE EUROPEAN UNION

THE INTRODUCTION AND EXTENSION OF CODECISION

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ABSTRACT:

In this paper we present a model of institutional reform in the European Union (EU). We focus on the introduction of the codecision procedure and its extension at the expense of the consultation procedure. In particular we develop a game-theoretical, spatial model of institutional choice and policy-making. First, the member states decide what procedures to apply to the policy issues under the EU's authority. Next, they set policies under the procedures they chose. We present a perfect information model and thus do not rely on informational asymmetries to explain the reform. We argue that it is not so surprising that member states decide to give the European Parliament (EP) a meaningful role in the legislative process. The introduction and extension of codecision leads to a transfer of power from the Commission to the EP. As a result, member states that are closer to the EP on a policy issue than to the Commission prefer codecision on that issue rather than consultation. Large member states also prefer codecision, because their vote shares are larger in the EP. Codecision is introduced for a set of issues if all member states gain enough on some issues to compensate for their losses on other issues.

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1. Introduction

The European Union (EU) has gone through major changes during the past decades. The number of member states, the extent of its responsibilities, its democratic character, and its overall power have all increased. It became one of the most powerful political organizations in the world, although its citizens and others do not always perceive it as such. Citizens are often not aware that the EU's decisions have a major impact on their everyday lives, and those who are aware question the democratic character of the EU.

Crombez (2003) and others, however, highlighted that on average EU institutions are not less democratic than the institutions of its member states. One of the main drivers for a further democratization of the EU is the empowerment of an extra institution in addition to the intergovernmental Council, the directly elected European Parliament (EP).

It is often considered as strange that member states give up part of their sovereignty to the EU, and even stranger that they created the EP, a supranational institution with veto and amendment rights, to legislate with the Council. The handover of powers to the EU is still at the center of political discussions in member states and potential entrants. Some European countries, like Switzerland and Norway, do not even consider applying for EU membership. In the United Kingdom membership is questioned by a growing number of voters.

The member states' decision to give the EP a more important role in policy making at the EU level is even stranger in light of the conclusions reached by scholars of EU politics. Tsebelis (1994) pointed out that the codecision procedure, which empowers the EP, can increase the distance between the policy outcome and the member states' ideal points. Steunenberg (1994) and Crombez (1996, 1997) highlighted the blocking powers of the EP under codecision. Crombez further emphasized the EP's amendment rights. Furthermore, Schneider (1995) concluded that under codecision the EP and the Council can set a policy that is inferior for every member state, but that any change to this policy would be vetoed. This empowerment also impedes decision-making, and possibly decreases the powers of the member states. Häge (2011) concluded that the empowerment of the EP results in more politicized Council decision-making. Bureaucrats decide less on their own. Selck and Steunenberg (2004) found in their empirical analysis that the outcome of policy-making procedures was counterintuitively closer to the EP's preferred policy under consultation than under codecision, but they argued that this is due to luck and to the fact that the EP is less extreme on issues

where it does not have veto power. For an overview of studies on the EP we refer to Hix, Raunio and Scully (2003).

One of the most commonly offered explanations for the empowerment of the EP is that member states do not act completely rationally, but want to signal their support for European integration and reducing the so-called democratic deficit. One could think that Members of the EP (MEPs) vote according to their respective member state governments' wishes. Noury and Roland (2002) and others, however, offer evidence for the supranational voting behavior of MEPs.

Another explanation, offered by König (2008), is that member states endorse the empowerment of the EP, because under codecision the Commission no longer makes the proposal, but rather the EP does. The member states benefit from this shift, because the EP is less informed about the preferences of the member states than is the Commission. As a result member states can pretend that they are closer to the status quo than they really are, for example, if the EP and the Commission want to move further away from the status quo than does the Council, and obtain a policy that is closer to them than under consultation. The assumption that the EP is less informed than the Commission is not unrealistic because the Commission has a far more extensive staff. However, this does not explain why the Commission would not inform the EP about the Council's true preferences, if the Commission and the EP have similar preferences.

Steunenberg and Dimitrova (2003) concluded that member states take a variety of policy issues into account when they compare legislative procedures. They used power indices to analyze how member states decide what procedures to use, and empirically studied the areas to which codecision was extended by the Amsterdam Treaty. They used the expected benefit from the procedure as the determining factor for its extension.

In our analysis we use spatial theory to explain that member states empower the EP and endorse a change from consultation to codecision. We first present a one-dimensional model with perfect and complete information. Next, we turn to a multidimensional policy space to broaden the argument. In contrast to König (2008), we do not use imperfect and asymmetric information as an explanation for the empowerment of the EP, but neither do we refute his claims. One may see our argument as complementing his rather than as a critique of it. We show that one does not need informational asymmetries to explain that member states vote in favor of codecision.

One may argue that member states do not have perfect and complete information, when they decide to introduce the codecision procedure. They do not know how the preferences of the Commission and the EP will evolve. We argue that the composition of both legislative bodies may vary, but that in the end the median is more or less stable over time. Contrary to König and Brauning (1998), we do not assume that member states face uncertainty about the policies that will be voted on and the position of each of the political actors in the policy space.

In the following section we present and discuss our one- and multi-dimensional models. The third section provides empirical evidence. The fourth section, finally, formulates our conclusions.

2. Spatial Models of Institutional Reform and Policy Making

We present onedimensional and multidimensional models of institutional reform and policy making in the EU. We first assume that the policy space is onedimensional. In reality, however, the policy space consists of a large number of dimensions, because a large number of issues are considered in policy making. Moreover, policy making may involve vote trading across different issues considered in a single legislative proposals, and across different legislative proposals. We are considering institutional choice in addition to policy making. At the institutional choice stage even more issues may be considered. Nonetheless onedimensional models can be useful as benchmark models. They are also more intuitive and analytically tractable.

In our models the political actors have complete and perfect information about each other's preferences and actions taken. The equilibrium concept is subgame perfection.

2.1 A Onedimensional Model

2.1.1 Actors and Preferences

The n member states are assumed to have Euclidean preferences over EU policy p , with ideal policy p_i for member state i . For simplicity we assume that member state 1 has the lowest and member state n the highest ideal policy.

Commissioners and MEPs also have Euclidean preferences. The Commission and the EP use simple majority. So they can be represented as unitary actors. Their median voters' ideal policies, p_p and p_c , respectively, can be considered as their ideal policies. The Council is not represented as a unitary actor, because it votes by unanimity or qualified majority. Under unanimity rule the Council can be represented by its two most extreme member states. When qualified majority voting is applied, it can be represented by two pivotal member states, one for a move to the left, the member state with the 255th vote from the left, and one for a move to the right, the member state with the 91st vote from the left.¹

A member state votes in favor of a policy proposal if the proposal is closer to its ideal policy than is the status quo. So, if the status quo is at zero, member state i with an ideal policy to the right of the status quo votes in favor of a proposal p if p is in its acceptance set $[0, 2p_i]$.

2.1.2 The Sequence of Events

The model starts with an institutional choice stage. In particular the Council votes on the procedure that will be used: the consultation procedure or the codecision procedure. The introduction of codecision requires unanimity. In the absence of unanimity the consultation procedure continues to be used. Then this stage is followed by the policy making stages. To model these stages we use the models of the consultation and codecision procedures presented by Crombez (1996, 1997, 2000). We want to investigate under which conditions the Council members approve the use of the codecision procedure. What are their reasons for doing so and do they anticipate enlargements? Why would large member states vote in favor of the codecision procedure? Why would moderate member states vote in favor (König 2008)?

If the Council, in the first stage, chooses to apply *consultation*, then the Commission comes up with a proposal in the second stage. The Commission is the only institution that can initiate legislation, but it has to respond to requests for a proposal by the Council or the EP. In the third stage, member state 1 can amend the proposal. For simplicity we assume only one member state can amend the proposal, just like in Crombez's earlier work (1996, 1997, 2000). The Council votes on this amendment by unanimity in the fourth stage. If the amendment is

adopted, it becomes EU policy. If it is not adopted or no amendment was made, the Council votes on the original proposal by qualified majority in the fifth stage. If the proposal is adopted, it becomes EU policy. Otherwise, the status quo prevails.

If the Council decides to apply *codecision* in the first stage, it is also up to the Commission to come up with a proposal in the second stage. Again the Commission has monopoly proposal power but no gatekeeping power. In the third stage, similarly to the consultation procedure, only one member state can propose an amendment. In the fourth stage the Council votes on the amendment by unanimity. If the amendment is adopted, the process moves on to the sixth stage. If no amendment is proposed or approved, the Council votes on the Commission's proposal in the fifth stage. If a qualified majority approves the proposal, it becomes the common position and the process moves on to the sixth stage. Otherwise the status quo prevails. In the sixth stage the EP proposes a joint text in the Conciliation Committee. If the Council approves the joint text by qualified majority and the EP by simple majority in the seventh and eighth stages, the joint text becomes the EU policy. Otherwise the status quo prevails.

In reality member states can also propose joint texts in the Conciliation Committee. Thomson et al. (2006) tested the predictive power of the different type of models, however, and concluded that spatial models that give the EP the bargaining power in the Conciliation Committee do best in empirical studies. This suggests that it is reasonable to assume that the EP makes the proposal in the Conciliation Committee, as we do.

2.1.3 The Policy Making Equilibrium Under Consultation

If in the first stage the member states decide to apply consultation, the second stage will be as follows. The Commission wants the policy as close as possible to its ideal policy, but this does not necessarily mean that it proposes its own ideal policy. It will anticipate what policies will be approved. The Commission knows that if its proposal can be amended by unanimity, it will possibly get an outcome that is further away than the outcome it would get if it proposed a policy that could not be amended by a unanimous Council and could be approved by a qualified majority in the Council. So, the Commission proposes, for example, the ideal policy of the most conservative member state, that is, the member state closest to the status quo, if all member states are right of the status quo, and the Commission is left of the most conservative

member state. Thus in later stages the Council cannot amend and approves the proposal by qualified majority.

In general the Commission looks ahead at the last stage of the process. In that stage the Commission proposal is approved if a qualified majority prefers it to the status quo. Otherwise the status quo prevails. In the third and fourth stages a proposal that would be adopted in the last stage is successfully amended if it does not belong to the support of the member states' ideal policies, that is, if all member states want to move to the left (or right). For these reasons the Commission proposes a policy in the second stage that is preferred to the status quo by a qualified majority and belongs to the support of the member states' ideal policies.

The equilibrium policy under the consultation procedure will be as follows. The set CS of proposals that can be adopted under consultation is the set of policies that are preferred to the status quo by a qualified majority in the Council and belong to the support of the member states' ideal policies, meaning that there is no policy preferred to it by all member states. From this set the Commission proposes the policy that is closest to its own ideal policy.

2.1.4 The Policy Making Equilibrium Under Codecision

As already mentioned, the Commission, the EP and the member states think ahead and take into account what will happen in later stages. So, we use backward induction to find the subgame perfect equilibrium.

In the last two stages the Council and the EP consider the joint text. The member states and the EP vote in favor if they prefer it to the status quo. Otherwise the status quo prevails. Therefore the EP proposes a joint text in the sixth stage that is preferred to the status quo by the EP and a qualified majority in the Council. In particular it proposes the policy it prefers most from among those policies. Note that no other policies are preferred to this proposal by a qualified majority in the Council and the EP.

In the sixth stage the EP proposes the common position as a joint text, only if it is preferred to the status quo by the EP and a qualified majority, and no other such policy is preferred to it by the EP. Otherwise it proposes a different policy, the policy that satisfies these requirements. In the stages two through five the Commission and the member states are thus aware that no

policy can be adopted other than this optimal EP joint text. Since the Commission does not have gatekeeping rights and a qualified majority prefers the joint text to the status quo, the joint text becomes EU policy. Stages two through five are thus irrelevant.

So, the equilibrium policy under codecision is the most preferred policy of the EP in the set *CD* of proposals that are preferred to the status quo by the EP and a qualified majority in the Council, and to which no other policies are preferred by both the EP and a qualified majority in the Council.

The codecision procedure has changed over time. Compared to the old codecision procedure, which was used till 1999, the EP rather than the Commission now chooses the policy that gets adopted from the set *CD*. However, in practice the former codecision procedure always worked in the same way as the current codecision procedure, because the EP set as an internal rule that if the Council confirmed its common position rather than the joint text, the EP would automatically reject it.

2.1.5 The Institutional Choice Equilibrium

In the first stage the member states compare the equilibrium policies of the codecision and consultation procedures, and decide whether to empower the EP or not. Thus the Council only empowers the EP if each member state gets at least the same utility under codecision as under consultation. The member states compare the Commission's proposal under consultation, which is preferred to the status quo by a qualified majority and to which no other such policy is preferred by all member states, with the EP's joint text, which is also preferred to the status quo by a qualified majority in the Council and to which no other such policy is preferred by the EP. Under consultation the Commission chooses the equilibrium policy, whereas under codecision the EP does.

Under both procedures the equilibrium policy is preferred to the status quo by a qualified majority. Moreover, no such policy is preferred to the equilibrium policy under consultation by all member states. So, all member states will only approve introducing codecision if it leads to the same policy, that is, if the equilibrium policy under consultation is equal to the equilibrium policy under codecision. Member states may then support codecision to give the impression that they are supporting further democratization of the EU.

Both equilibrium policies are the same in three scenarios: (1) if the Commission and the EP have the same ideal policy; (2) if the Commission and EP both have ideal policies to the left of the set CS, that is, they want to move in the opposite direction than the pivotal member states or are to the left of all member states; and (3) if the Commission and EP are both to the right of the set CS, that is, they both want to move farther away from the status quo than the pivotal member state is willing to accept or than all member states. We assume in the above statement that the pivotal member states are to the right of the status quo. If they are to the left, the opposite holds. If the status quo is between the pivotal member states, the status quo prevails whatever procedure is used.

For example, in case the EP wants to move less far in a direction than the pivotal member states and the Commission wants to move farther in that direction than the member state that is pivotal for this move, then the more progressive member states will oppose the empowerment of the EP in the first stage, because the policy will be closer to the status quo than under consultation. So consultation will prevail.

For the mathematical derivation of the equilibria we refer to the appendix.

2.2 The Impact of Member State Preferences

In this section we discuss how the preferences of member states influence their attitudes toward codecision. We assume for simplicity that the status quo is equal to 0, and that the pivotal member states want to move to the right, away from the status quo. We assume furthermore that member state 1's ideal policy is equal to the status quo, and member state n 's ideal policy is equal to the policy $2p_a$ that makes member state a indifferent to the status quo, where a is the member state that is pivotal for a move to the right. As a consequence a qualified majority agrees to move away from the status quo under both procedures, and no proposal it agrees on can be amended in the Council. So, the interval QM of policies that can be approved by a qualified majority in the Council is equal to the set $[0, 2p_a]$.

We now analyze how the introduction of codecision affects the equilibrium policy and how this impact depends on the configuration of preferences. We first see what happens if the Commission is in the set QM.

- If the Commission has the same ideal policy as the EP, the equilibrium policy is the same under both procedures. Member states are then indifferent between the two procedures.
- Otherwise, the equilibrium policy (weakly) moves into the direction of the EP. Codecision is then preferred by the following member states.
 - Member states closer to the EP than to the Commission, if the EP is also in the set QM.
 - Member states closer to $2p_a$ than to the Commission, if $p_p > 2p_a$.
 - Member states closer to 0 than to the Commission, if $p_p < 0$.

Next, we study what happens if the Commission is not in the set QM.

- If the Commission is to the left of the set QM, $p_c < 0$, the following member states prefer codecision.
 - Member states closer to the EP than to the status quo, if the EP is in the set QM.
 - Member states closer to $2p_a$ than to the status quo, if $p_p > 2p_a$.
 - Otherwise the equilibrium policy is the same under both procedures and member states are indifferent.
- If the Commission is to the right of the set QM, $p_c > 2p_a$, the following member states prefer codecision.
 - Member states closer to the EP than to $2p_a$, if the EP is in the set QM.
 - Member states closer to 0 than to $2p_a$, if $p_p < 0$.
 - Otherwise the equilibrium policy is the same under both procedures and member states are indifferent.

So, the Commission and the EP both have a ‘corrected’ ideal policy, their most preferred policies in the set QM, which they will chose as proposals, under consultation and codecision respectively. These corrected ideal policies are equal to their ideal policies if it they are in the set QM. They are equal to 0 if they are left of this set, and to policy $2p_a$ if they are right of the set. The member states closer to the EP’s corrected policy than to the Commission’s prefer codecision to consultation. The farther a member state is away from the midpoint between the corrected ideal policies of the Commission and the EP, the more outspoken its preferences are.

2.3 A Multidimensional Model

In our multidimensional model member states first chose for what dimensions to introduce codecision. They then set policies on the issues under the EU's jurisdiction in a sequential matter. The institutional choice is made during the first two stages of the process. In the first stage member state $k \in \{1, \dots, n\}$ proposes which subset $E \subseteq D$ of dimensions to decide under codecision. In the second stage the n member states vote on this proposal. If they all agree, the set E of dimensions is moved to codecision. Otherwise, all dimensions remain under consultation. In reality other member states could formulate proposals or amendments, but our assumption that only one member state has proposal rights at the institutional choice stage does not affect our conclusions.

After making an institutional choice, member states move on and set policies on each of the m dimensions under consideration sequentially. Since the member states, Commissioners and MEPs have Euclidean preferences, policy making on a given dimension can be studied as if it were the only dimension. Policy making in our multidimensional model is thus as in our onedimensional model.

As in our onedimensional model political actors have complete and perfect information. The equilibrium concept is thus subgame perfection.

Since approval by all member states is required in the second stage, codecision is introduced for a subset E of dimensions, only if all member states are better off as a result of this change. In the first stage member state k considers what subsets can be approved by all member states and proposes the subset that maximizes its own utility.

So, overall the move of a set of policies from consultation to codecision must benefit all member states. Member states may prefer consultation for some issues in the set E , but their decreases in utility as a result of the introduction of codecision on these dimensions must be outweighed by their utility gains on the other dimensions in the set E . Otherwise, they would not approve the institutional change and it would not occur.

Instead of comparing consultation and codecision separately for each policy dimension, member states compare their total utilities under the consultation procedure to their total utilities under codecision. So, even if a member state loses on one dimension, it can be compensated on another dimension. Member states accept losses in a policy domain if they are compensated in other domains. In fact, this can be seen as vote trading during the

institutional choice stages. We assume that all dimensions are equally valued. One may argue that in reality member states allocate weights to the different dimensions, but we abstract from this, because we do not need this to make our point.

To illustrate the institutional choice, we now turn to an example. There are policy dimensions. All political actors are located to the right of the status quo on each dimension. For simplicity, we use only seven member states in our example. On dimension 1 the member states are ranked from one to seven, and member state 1 is the most conservative, whereas member state 7 is the most progressive. We set the status quo equal to zero and the member states are located at positions one to seven. The Commission is assumed to have preferences equal to the most conservative member state. The EP is assumed to have preferences equal to the most progressive member state. All the assumptions are the same for the second policy area, dimension 2, but the configuration of the member states' preferences is the opposite: member state 7 is now at position 1 and member state 1 at position 7. We assume that a qualified majority requires a majority of five out of seven. As a consequence, member states 3 and 5 are the pivotal member states.

-Figure 1 about here-

The set of policies in dimension 1 that are preferred to the status quo under codecision by a qualified majority in the Council and the EP and that cannot be amended by a qualified majority in the Council and the EP ranges from the preferred policy of member state 3 to the preferred policy of member state 6. Member state 6's ideal policy makes pivotal member state 3 indifferent to the status quo. This set is smaller than the set of policies that can be adopted under consultation, because under consultation a unanimous Council is required to amend a proposal. Another difference between consultation and codecision is that under consultation the Commission defines the proposal whereas under codecision the EP does. This results in an equilibrium policy under consultation equal to 1 and an equilibrium policy under codecision equal to 6.

On policy dimension 2 the equilibrium policies are the same, but the order of the member states is reversed. We now calculate the utilities of the member states and their total gains from changing from consultation to codecision. If all member states have at least the same

utility than before and there are member states that gain from this change, member states will approve codecision. The utilities are shown in Table 1. All member states gain in utility and as a consequence will endorse the introduction of codecision on both dimensions.

-Table 1 about here-

In general one can expect issues for which a move to codecision yields high total utility gains for member states to be included in the set E . Not every member state needs to gain from the move on every issue, but if it loses out on an issue, its gains on another issue need to be high enough to compensate for its losses. As seen above member states gain from the introduction of codecision on an issue, if they are closer to the (corrected) ideal policy of the EP than to that of the Commission. One can thus expect issues on which member states are relatively close to the EP to be included in the set E .

PROPOSITION 1

Member states that are relatively close to the EP on a policy issue favor the introduction of codecision on that issue. Codecision is introduced for an issue if the EP is relatively close to the member states on that issue.

When codecision is introduced on a policy issue, the role of agenda setter is transferred from the Commission to the EP. The question why member states empower the EP is then arguably the wrong question, or at a minimum it is misleading. The member states do not relinquish power to the EP, when they introduce codecision on an issue, but rather they shift power from the Commission to the EP. If as a result of such a shift equilibrium policies in the different dimensions are more central than under consultation, as they are in Figure 1, member states will gain overall.

Since large member states are better represented in the EP than they are in the Commission, they can be expected to be closer to the EP than they are to the Commission. As a result large member states can be expected to be more in favor of codecision than are small member states.

3 A First Step Toward An Empirical Test

Our goal is to test our theory's conclusions empirically, focusing on the extension of codecision in the Lisbon Treaty. Specifically we want to test whether member states that were relatively close to the EP on an issue did indeed favor the introduction of codecision on that issue. Furthermore we want to study whether codecision was indeed introduced for issues on which the EP was relatively close to the member states on average.

Such tests require information on the location of member states and institutions on issues that were moved to codecision as well as on issues that remained under consultation. At this point in our study we have not gathered and analyzed this information. We will, however, formulate preliminary conclusions based on data on member states' and institutions' opinions on the introduction of codecision, gathered as part of the DOSEI project.²

In appendix B we provide a list of issues to which the consultation procedure still applies post-Lisbon and a list of issues that moved from consultation to codecision after the approval of the Lisbon Treaty. Some of the issues that remain under consultation seem very specific and technical, such as the language arrangements for intellectual property rights, but other issues are politically more controversial, such as tax, employment and monetary policy issues.

The DOSEI project determined the member states' and institutions' positions on the introduction of codecision in twelve policy areas: agriculture, cohesion, security and justice, taxes, the internal market, employment, social security, monetary, economic, social, foreign, and defense policy. In all policy areas the introduction of codecision was opposed by at least three member states, and by usually more. The introduction thus would not have occurred in any policy area, if it had been considered in isolation.

Nonetheless codecision was extended to more than an extra fifty policy areas. This suggests that a large subset of issues was found such that all member states benefited from the introduction of codecision to them. The areas in which the introduction was opposed by the highest numbers of member states, foreign and defense policy, taxes and social security, and economic and monetary policy, are precisely those areas in which codecision was hardly or not at all introduced. This suggests that the utility losses that would result from the

introduction of codecision on these issues for the opposing member states would have been too great to compensate them by the introduction of codecision on other issues.

It is worth noting that there was a remarkable confluence between the preferences of Germany and the eventual outcome. The policy areas where Germany opposed the introduction of codecision mainly stayed under consultation: foreign, defense, monetary, economic and employment policy.

The data further show that in most policy areas the Commission and the EP have similar preferences. In these areas the introduction of codecision does not represent any cost to member states in a perfect information world. Therefore member states may feel inclined to empower the EP on issues that do not require much technical knowledge, whereas on other issues that require this kind of knowledge, consultation may be preferable.

4 Discussion and Conclusion

In the analysis above we discussed the existing explanations for the extension of codecision at the expense of consultation, and presented our own theory. One of the earlier arguments was that the EU wanted to increase its credibility and decrease the democratic deficit, and that the member states therefore did not act completely rationally when empowering the EP. Another explanation was that due to informational asymmetry the Council could benefit from codecision, given the right configuration of preferences.

Like Steunenbergh and Dimitrova (2003) we argued that member states take into account the issues that will be voted on using the new procedure and the preferences of all the political actors on these issues, when they vote on whether to extend codecision to a set of policy areas. They compare the benefits from the extension of the use of the procedure to the losses.

We find that there are configurations of preferences on different policy dimensions for which it is optimal for all member states to endorse codecision to be applied in all these dimensions, because there are gains from trade. This means that each member state wins more on certain policy issues than it loses on others. As a consequence we argue that one does not need imperfect information or kindhearted behavior to explain why member states empower the EP, but there is a simple explanation based on selfishness.

We conclude that member states do not surrender powers to the EP when they introduce codecision, but rather they transfer powers from the Commission to the EP. Member states with preferences relatively close to those of the EP on an issue thus favor the introduction of codecision on that issue, whereas member states with preferences relatively close to those of the Commission oppose it. Codecision is extended to issues on which the EP is relatively close to the member states on average.

We further argue that large member states tend to be more in favor of codecision than small member states. This is due to the fact that large member states are underrepresented in the Commission.

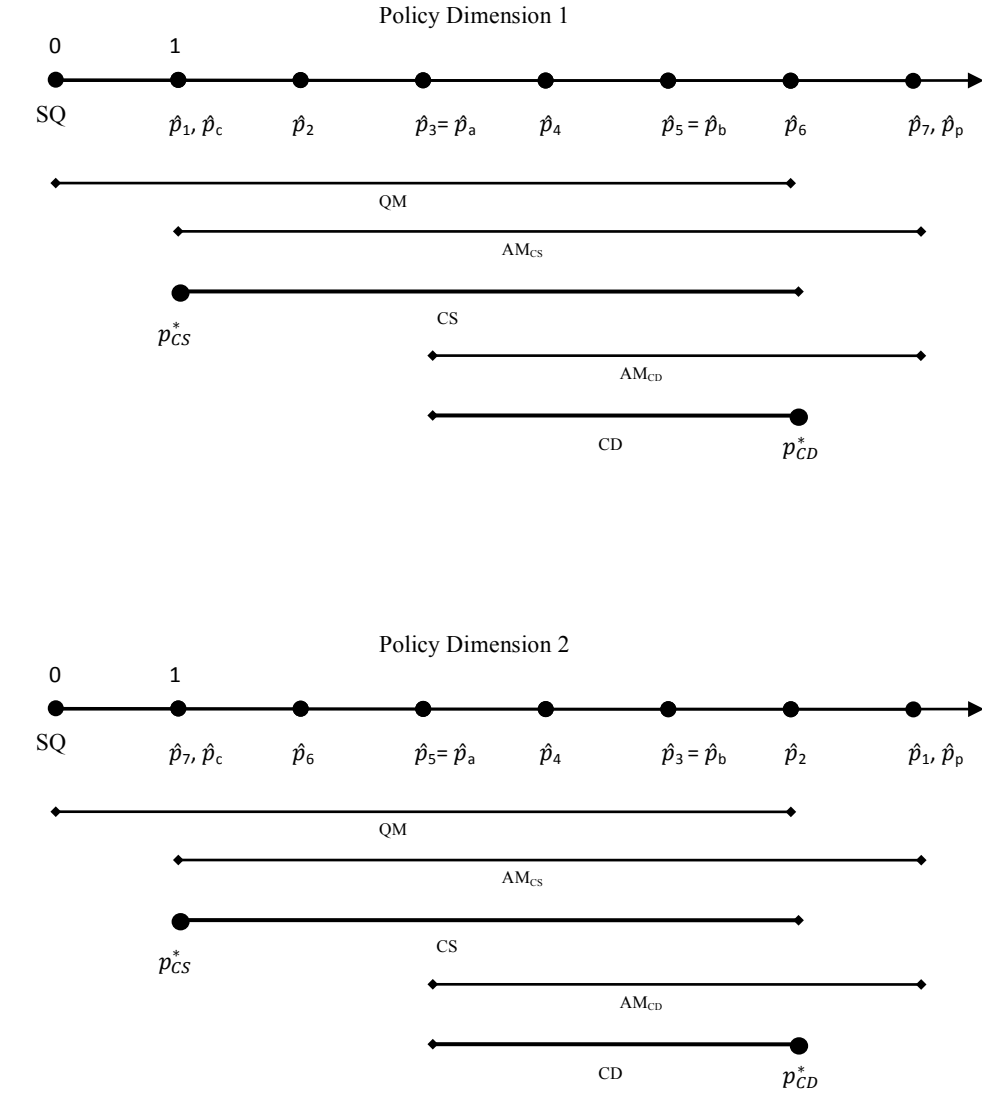
In our first steps toward empirically testing our theory we present some observations that are consistent with it. This paper is certainly not the endpoint of our research on the institutional choice that precedes EU policy making.

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FIGURES & TABLES

Figure 1:



SQ:	Position of the status quo
\hat{p}_c :	Preferred policy of the European Commission
\hat{p}_p :	Preferred policy of the European Parliament
\hat{p}_x :	Preferred policy of Member State x ($x = 1, 2, 3, 4, 5, 6, 7$)
$\hat{p}_{a/b}$:	Preferred policy of pivotal Member State a/b
QM:	Set of policies that are preferred to the status quo by a QM in the Council
AM _{CS} :	Set of policies that cannot be amended by a unanimous Council
AM _{CD} :	Set of policies that cannot be amended by a QM in the Council and the EP
CS:	Set of policies that are preferred to the status quo by a QM in the Council and cannot be amended by a unanimous Council
CD:	Set of policies that are preferred to the status quo by a QM in the Council and the EP and that cannot be amended by a QM in the Council and the EP
p_{CS}^* :	Equilibrium policy under consultation
p_{CD}^* :	Equilibrium policy under codecision

Table 1:

Dimension 1

Member state	1	2	3	4	5	6	7
U(CS)	0	-1	-4	-9	-16	-25	-36
U(CD)	-25	-16	-9	-4	-1	0	-1
U(CD) - U(CS)	-25	-15	-5	5	15	25	35

Dimension 2

Member state	1	2	3	4	5	6	7
U(CS)	-36	-25	-16	-9	-4	-1	0
U(CD)	-1	0	-1	-4	-9	-16	-25
U(CD) - U(CS)	35	25	15	5	-5	-15	-25

Total gain of utility over both dimensions

Member state	1	2	3	4	5	6	7
Gain Dim. 1	-25	-15	-5	5	15	25	35
Gain Dim. 2	35	25	15	5	-5	-15	-25
Sum of gains	10	10	10	10	10	10	10

Appendix A

The Model

- The policy space $P \subseteq \mathfrak{R}^n$ consist of n dimensions, each corresponding to a policy issue.
- The political actors are: the member states in the Council; the MEPs; and the Commissioners.
- They have Euclidean preferences over EU policy $p^{EU} \in P$. That is, actor j has the following utility function: $U_j(p^{EU}) = -(x_j - p^{EU})^2$, where $x_j \in P$ is actor j 's ideal policy.
- We consider two different stages: the institutional stage and the legislative stage or legislative process, consisting of multiples stages itself.
- In the legislative process the n policy issues are considered one at a time. The European Parliament (EP) uses simple majority rule and can thus be represented as a unitary actor in the legislative process with ideal policy x_{EP}^i on dimension i equal to the ideal policy of the median MEP on that dimension, $\forall i$. See Black (1958).
- Similarly, the Commission can be represented as a unitary actor with ideal policy x_C^i on dimension i .
- The Council uses qualified majority rule (255/345 votes) or unanimity. Under qualified majority rule the member state a^i that is pivotal for a move to the right on dimension i is the member state with the 91st vote from the left. Member state b^i is pivotal for a move to the left on dimension i . It is the member state with the 255th vote from the left. Under unanimity the member state l^i that is most to the left on dimension i is pivotal for a move to the right, whereas the member state m^i that is most to the right on dimension i is pivotal for a move to the left.
- We assume for simplicity and without loss of generality that the status quo $q = 0$, and that there is no qualified majority in favor of a move to the left on any dimension ($x_{b^i}^i \geq 0$). So, we consider rightward moves only.
- The structure of the institutional process is as follows.
 1. During negotiations between all EU member states the policy domains and their respective necessary majorities and decision rules are discussed.
 2. These arrangements are officialised and written down in Treaties. Treaties are approved by unanimity of all member states.
 3. A vote on the specific treaty is held. Actor j can vote yes (=1) or no (=0): $v_j(mc) \in \{0,1\}$.
- The structure of the legislative process is as follows: the n issues are considered sequentially: 1,...,n.
- The structure of the legislative process on issue i is as follows.
 1. Under Consultation
 1. The Commission C makes a policy proposal pp^i .
 2. The member states vote on the proposal. It is approved by qualified majority, otherwise the status quo prevails.
 2. Under Codecision

1. The Commission C makes a policy proposal pp^i .
 2. Member State k can come up with an amendment
 3. The Council votes on the amendment by unanimity. If the amendment is adopted, we move on to point 5.
 4. If no amendment is proposed or approved, the Council votes on the Commission's proposal. If approved by a QM in the Council the proposal becomes the *common position* and the process moves forward. Otherwise the status quo prevails.
 5. The EP proposes a joint text in the Conciliation Committee and the Committee votes on it by simple majority for the representatives of the EU and qualified majority for the member states. If the Conciliation Committee fails to agree upon a joint text, the status quo prevails
 6. The EP and the member states vote on the proposal. If the EP and a qualified majority in the Council approve the proposal, it is adopted. Otherwise, the status quo prevails.
- There is complete and perfect information.
 - The equilibrium concept is subgame perfection.

The Equilibrium in the Legislative Process on Issue i

- Under consultation
 1. At the vote stage member state k votes in favor of the proposed policy p^i if and only if it is closer to its ideal policy x_k^i than is the status quo. That is, if and only if $U_k(pp^i) \geq U_k(q^i) \Leftrightarrow |pp^i - x_k^i| \leq |q^i - x_k^i|$. Otherwise it votes against.
 2. At the proposal stage the Commission considers the member states' voting strategies.
 - If member state I^i does not want to move to the right ($x_{I^i}^i < 0$), no policy is preferred to the status quo by a unanimous Council, and the status quo prevails. The Commission then proposes the status quo.
 - If member state I^i does want to move to the right ($x_{I^i}^i \geq 0$), the Commission's proposal is approved if and only if member state a^i prefers it to the status quo. That is, if and only if $U_{a^i}(pp^i) \geq U_{a^i}(q^i) \Leftrightarrow |pp^i - x_{a^i}^i| \leq |q^i - x_{a^i}^i| \Leftrightarrow pp^i \in [0, 2x_{a^i}^i]$. The Commission then proposes the policy in the set $CSQ^i = [0, 2x_{a^i}^i]$ it prefers most. Its optimal proposal strategy is then as follows. If its ideal policy is left of the status quo ($x_C^i < 0$), it proposes the status quo ($pp^i = 0$). If its ideal policy is right of the policy $2x_{I^i}^i$ that makes member state a^i indifferent to the status quo, it proposes policy $2x_{I^i}^i$. Otherwise it proposes its ideal policy x_C^i .
 3. The Commission proposal is adopted and becomes EU policy p_{cs}^i .

- Under codecision
 1. When considering the Conciliation Committee's joint text in the last stage of the process actor j (member state k and the EP) votes in favor of the proposed policy cc^i if and only if it is closer to its ideal policy x_j^i than is the status quo. That is, if and only if $U_j(pp^i) \geq U_j(q^i) \Leftrightarrow |pp^i - x_j^i| \leq |q^i - x_j^i|$. Otherwise it votes against.
 2. A joint text thus is adopted in the last stage only under the following conditions.
 - If either member state a^i or the EP does not want to move to the right ($\min\{x_{EP^i}^i, x_{a^i}^i\} < 0$), no policy is preferred to the status quo by the EP and a qualified majority in the Council. No policy is then adopted at the last stage and the status quo prevails.
 - If member state a^i and the EP both do want to move to the right ($\min\{x_{EP^i}^i, x_{a^i}^i\} \geq 0$), the Commission's proposal is approved if and only if member state a^i and the EP prefer it to the status quo. That is, if and only if $pp^i \in [0, \min\{2x_{EP^i}^i, 2x_{a^i}^i\}]$.
 3. Suppose now the Commission proposal would differ from the EP's proposal.
 - The EP compares it with its ideal policy from the set of policies that are preferred to the status quo by a qualified majority of countries and the EP and that cannot be amended. If the Commission proposal differs from that policy, it would always reshape the proposal in the Conciliation Committee.
 - While shaping this proposal in the Conciliation Committee, the EP considers the member states voting strategies.
 - If member state a^i or the EP does not want to move to the right of the proposal, and member state b^i or the EP does not want to move to the left ($pp^i \in [\min\{x_{EP^i}^i, x_{a^i}^i\}, \max\{x_{EP}^i, x_{b^i}^i\}]$), the EP proposes the same policy as the Commission would.
 - If member state a^i and the EP want to move to the right, the EP proposes its ideal policy if member state a^i prefers it to the status quo ($|x_{EP}^i - x_{a^i}^i| \leq |q^i - x_{a^i}^i|$). Otherwise it proposes the policy $2x_{a^i}^i - c^i$ that makes member state a^i indifferent to the status quo as a joint text. Note that this joint text belongs to the set $[\min\{x_{EP^i}^i, x_{a^i}^i\}, \max\{x_{EP}^i, x_{b^i}^i\}]$ and to the set $[0, \min\{2x_{EP^i}^i, 2x_{a^i}^i\}]$.
 - If member state b^i and the EP want to move to the left, the EP proposes its ideal policy if member state b^i prefers it to the status quo ($|x_{EP}^i - x_{b^i}^i| \leq |q^i - x_{b^i}^i|$). Otherwise it proposes the policy $2x_{b^i}^i - q^i$ that makes member state b^i indifferent to the status quo as a joint text. Note again that this joint text belongs to the set $[\min\{x_{EP^i}^i, x_{a^i}^i\}, \max\{x_{EP}^i, x_{b^i}^i\}]$ and to the set $[0, \min\{2x_{EP^i}^i, 2x_{a^i}^i\}]$.

4. For a proposal to be adopted and not to be amended it thus needs to belong to the set $CD^i = [x_{1^i}^i, \min\{2x_{EP}^i, 2x_{a^i}^i \max\{x_{EP}^i, x_{b^i}^i\}\}]$ with $\min\{x_{EP^i}^i, x_{a^i}^i\} \geq 0$. If $\min\{x_{EP^i}^i, x_{a^i}^i\} < 0$, the status quo prevails whatever policy is proposed.
5. Even if the Commission proposes a policy that does not belong to the set CD^i , EU policy will belong to that set.
6. The Commission then proposes the policy in the set CD^i the EP prefers most, because it anticipates the agenda setting power of the EP in the Conciliation Committee. Its optimal proposal strategy is then as follows. The Commission proposal is adopted and becomes EU policy p_{cd}^i .

The Equilibrium in the Legislative Process

- Under each procedure the equilibrium EU legislative program consists of the equilibrium policy on each dimension. For example, under codecision the equilibrium policy $p_{cd} = (p_{cd}^1, \dots, p_{cd}^n)$. The set of programs the Commission can successfully propose under codecision is then the set $CD = \{p \mid p^i \in CD^i, \forall i \in \{1, \dots, n\}\}$.

The Equilibrium in the Institutional Stage

Member states vote in favor of codecision on a package of issues and policy areas, only if their total utility is better compared to consultation. This total utility can be seen as the sum of utilities a member states receives from each of the policy dimensions.

That is, a country i will approve a package of n policy dimensions k .

$$\sum_{k=1}^n U_i(p_{cd}^k) = \sum_{k=1}^n -(x_i - p_{cd}^k)^2 \geq \sum_{k=1}^n U_i(p_{cs}^k) = \sum_{k=1}^n -(x_i - p_{cs}^k)^2$$

So, a transfer of policies from consultation to codecision will be approved if:

$$\forall i \in \{1, \dots, 27\}: \sum_{k=1}^n U_i(p_{cd}^k) = \sum_{k=1}^n -(x_i - p_{cd}^k)^2 \geq \sum_{k=1}^n U_i(p_{cs}^k) = \sum_{k=1}^n -(x_i - p_{cs}^k)^2$$

Appendix B

List of Issues to Which the Consultation Procedure Applies

The legal bases are the articles in the consolidated version of the Treaty on the Functioning of the European Union (TFEU), unless indicated otherwise. (UN = unanimity, SM = simple majority.)

Issue	Legal Bases	UN	SM
Free movement & Social Protection	21.3	✓	
Participation in Elections	22.1, 22.2	✓	
Diplomatic Help	23		
Union Law liberalization of capital movement to/from a third country	64	✓	
Measures for administrative cooperation on freedom, security and justice	74		
Provisions related to passports, ID-cards...	77.3	✓	
Provisional measures for acute migration of citizens from a third nation to a member state	78.3		
Family law; cross border	81.3	✓	
Specific measures for cooperation in police issues	87.3	✓	
Operations of authorities of member state in other member states	89	✓	
Transport rate differences of carriers	95.3		
Directives and regulations for principles of competition	103.1		
Regulations concerning state aid and competition and internal trade distortion	109		
Provisions for harmonization of turnover taxes ... (Internal Market)	113	✓	
Directives for the approximations of laws ... affecting internal market	115	✓	
Language of IP-rights	118	✓	
European institutions' access to credit	125.		
Government deficits	126.14	✓	
Supervision by ECB	127.6	✓	
Euro banknotes and coins	128.2		
ESBC ECB	129.4		
Progress in Member States' obligations	140.2		
Guidelines employment policies	148.2		
Establish an employment committee --> coordination labor markets	150		✓
Employment: specific issues	153.2	✓	
Establish social protection committee	160		✓
Specific programmes activities EU	182.4		
Set up undertakings for research (programs)	188		
Environmental issues: town/country planning, water resource management, land use provision of fiscal nature	192.2	✓	

Establish measures of fiscal nature in environmental issues	194.3	✓	
provisions of public health, security or policy, freedom of movement	203	✓	
Reciprocal rights/obligations tourism in specific cases	218.6b		
Exchange rate	219.1	✓	
Replacement of member of commission due to compulsory retirement or death	246	(✓)	
Provision to confer jurisdiction regarding IP rights	262	✓	
ECB executive board members	283.2		
Adopt members of Court of Auditors	286.2		
European investment bank Statute adaptation	308	✓	
Provisions for the system of own resources	311	✓	
Determination of methods and procedure budget revenue --> available to Commission	322.2		
Costs of implementation of enhanced cooperation expenditures and administrative costs	332	✓	
Adopt a decision that it will act under the ordinary legislative procedure	333.2	✓	
Application of treaties to remote areas	349		
Establishment organization and functioning of European External Action Service	27.3 (TEU)		
Decision establishing specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing for common foreign and security policy	41.3 (TEU)		
Ordinary revision procedures: decision in favor of examining the proposed amendments of treaties	48.3 (TEU)		✓
Simplified revision procedures: monetary area	48.6 (TEU)		

Legal Bases Moved from Consultation to Codecision following the Treaty of Lisbon

The legal bases are the respective articles in the consolidated version of the TFEU.

Issue	Legal Bases
Services of general economic interest	14
Citizens' initiative	24
Application of competition rules to the common agricultural policy	42
Legislation concerning the common agricultural policy	43
Exclusion in a Member State of certain activities from the application of provisions on the right of establishment	51
Extending provisions on freedom to provide services to service providers who are nationals of a third State and who are established within the Union	56
Liberalization of services in specific sectors	59
Adoption of other measures on the movement of capital to and from third countries	64.2
Administrative measures relating to capital movements in connection with preventing and combating crime and terrorism	75
Visas, border checks, free movement of nationals of non-member countries, management of external frontiers, absence of controls at internal frontiers	77.2
Asylum, temporary protection or subsidiary protection for nationals of third countries	78.2
Immigration and combating trafficking in persons	79.2
Incentive measures for the integration of nationals of third countries	79.4
Judicial cooperation in civil matters (excluding family law)	81
Judicial cooperation in criminal matters – procedures, cooperation, training, settlement of conflicts, minimum rules for recognition of judgments	82.1; 82.2
Minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension	83.1; 83.2
Measures to support crime prevention	84
Eurojust	85.1.2
Arrangements for involving the European Parliament and national parliaments in the evaluation of Eurojust's activities	85.1.3
Police cooperation	87.2
Europol	88.2.1
Procedures for scrutiny of Europol's activities by EP and national parliaments	88.2.2
Measures to eliminate distortions in the internal market	116
Intellectual property except language arrangements for the European intellectual property rights	118
Multilateral surveillance	121.6
Modification of the Protocol on the Statutes of the ESCB and ECB	129.3
Measures necessary for the use of the euro	133
Sport	165.2; 165.4
Public health	168.4
Public health – incentive measures to protect human health and in particular to combat the major cross-border health scourges, and measures to tackle	168.5

tobacco and alcohol abuse	
Cohesion Fund	177.2
Implementation of European research area	182.5
Implementation of the Framework Programme for Research: rules for the participation of undertakings and dissemination of research results	183.2; 188.2
Space policy	189
Energy, excluding measures of a fiscal nature	194.2
Tourism - measures to complement the action of the Member States in the tourism sector	195.2
Civil protection against natural and man-made disasters	196.2
Administrative cooperation in implementing Union law by Member States	197.2
Commercial policy - implementing measures	207.2
Economic, financial and technical cooperation with third countries	212.2
General framework for humanitarian operations	214.3
European Voluntary Humanitarian Aid Corps	214.5
Creation of specialised courts	257
Modification of Statute of Court of Justice	281
Procedures for monitoring the exercise of implementing powers	291.3
European Administration	298.2
Adoption of financial rules	322.1
Staff Regulations of officials and Conditions of Employment of Other Servants of the Union	336

¹ A qualified majority currently consists of 255 out of a total of 345 votes. Moreover, support from a majority of

² For more information on the DOSEI project we refer to its website: “<http://www2.sowi.uni-mannheim.de/lspol2/dosei/>”. See also König and Hug (2006).